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16 Attorneys for Defendants,
17 BCW DIVERSIFIED, INC., an Indiana Corporation, and ERIC BROWNELL, an
18 individual

19 **UNITED STATES DISTRICT COURT**
20 **CENTRAL DISTRICT OF CALIFORNIA– WESTERN DIVISION**

21 ULTRA PRO INTERNATIONAL, LLC,
22 a Delaware Limited Liability Company

23 Plaintiff,

24 vs.

25 BCW DIVERSIFIED, INC., an Indiana
26 Corporation, and ERIC BROWNELL, an
27 individual

28 Defendants.

CASE NO. 2:24-cv-08467-MAA

Assigned for All Purposes to:
Magistrate Judge: Maria A. Audero

DECLARATION OF ANDREW NELSON

**[EX PARTE APPLICATION TO
STAY DEADLINE TO FILE
RESPONSIVE PLEADING,
MEMORANDUM OF POINTS
AND AUTHORITIES, AND
[PROPOSED] ORDER FILED
CONCURRENTLY HEREWITH]**

1 I, Andrew Nelson, declares as follows:

2 1. I am an attorney licensed to practice law in the State of California and am
3 counsel of record for Defendants BCW Diversified, Inc. and Eric Brownell ("Defendants")
4 in this action. I have personal knowledge of the facts set forth herein and, if called as a
5 witness, could and would testify competently thereto.

6 2. I submit this declaration in support of Defendants' Ex Parte Application to
7 Stay Deadline to File Responsive Pleading.

8 3. On October 22, 2024, Defendants filed a Motion to Dismiss, Or, In The
9 Alternative, To Transfer (the "Motion to Dismiss"), which is set for hearing on November
10 20, 2024.

11 4. The current deadlines for Defendants to file responsive pleadings are
12 November 15, 2024 for BCW Diversified, Inc. and November 18, 2024 for Eric Brownell.

13 5. Between October 23 and November 12, 2024, I made multiple attempts to
14 meet and confer with Plaintiff's counsel, Kevin Keener, regarding a stipulated extension of
15 the responsive pleading deadline, as required by Local Rule 7-3. These efforts included:

16 a. A voicemail left for Mr. Keener on October 23, 2024.

17 b. A follow-up email sent on October 25, 2024, proposing either a stay
18 or a second stipulation to extend the responsive pleading deadline.

19 c. Additional follow-up emails sent on October 29, October 31,
20 November 1, November 4, and November 12, 2024.

21 d. A voicemail left on November 5, 2024, reminding Mr. Keener of the
22 need to confer under the local rules.

23 6. A true and correct copy of the email communications between me and Mr.
24 Keener is attached hereto as Exhibit A.

25 7. Despite these repeated attempts over a two-week period, Mr. Keener
26 provided only a single response indicating a date to talk but did not engage in substantive
27 discussions about the proposed extension or stay.
28


8. On November 12, 2024, at 12:58 p.m., I provided notice of this ex parte application to Mr. Keener via email. Exh. A.

9. In the notice email, I informed Mr. Keener that Defendants would be submitting an ex parte application to the Honorable Maria A. Audero, United States Magistrate Judge, in Courtroom 880 of the Roybal Federal Building and United States Courthouse, 255 E. Temple St., Los Angeles, CA 90012. I explained that, per Judge Audero's procedures, the application would not be set for hearing and would likely not be ruled on for at least two days after submission. I also informed him of the nature of the relief to be requested and, pursuant to Local Rule 7-19.1, requested that he inform me as soon as possible whether Plaintiff would oppose the application. Additionally, I advised that if Plaintiff opposes the ex parte application, opposing papers are to be filed no later than two court days following service of the application, and that he should advise the Courtroom Deputy Clerk as soon as possible whether Plaintiff intends to oppose the ex parte application.

10. As of the filing of this declaration, Mr. Keener has not responded to the ex parte notice, and I do not know whether Plaintiff intends to oppose this application.

11. Given the lack of substantive response from Plaintiff's counsel regarding our meet and confer efforts, Plaintiff's failure to oppose the Motion to Dismiss, and the rapidly approaching deadline for filing responsive pleadings, Defendants were compelled to seek ex parte relief from this Court.

I declare under penalty of perjury pursuant to 28 U.S.C. § 1746 and the laws of the United States that the foregoing is true and correct based on my knowledge, information, and belief and that this Declaration was executed on November 12, 2024.


Andrew R. Nelson

Pamela Ravalli

From: Andrew Nelson
Sent: Tuesday, November 12, 2024 12:57 PM
To: Kevin Keener
Cc: Pamela Ravalli; Marc Gravino; Joel Huotari; Denise Rivera
Subject: RE: BCW Diversified, Inc. v. Ultra Pro International, LLC

Importance: High

Dear Kevin,

Further to my emails in this thread below and my prior voicemails, I write to make a final attempt to see if we can stipulate to move the responsive pleading deadline. Would you let me know right away please?

If we can't reach agreement,

PLEASE TAKE NOTICE that Defendants will apply ex parte to the Honorable Maria A. Audero, United States Magistrate Judge, in Courtroom 880 of the Roybal Federal Building and United States Courthouse, 255 E. Temple St., Los Angeles, CA 90012, wherein we will seek an order staying the responsive pleading deadlines pending disposition of the Motion to Dismiss. As grounds, given that should our Motion to Dismiss be granted, filing responsive pleadings by the 15th and 18th, respectively, would be a needless waste of time and resources for both Defendants as well as the Court.

We will plan on filing the application and supporting papers later this afternoon.

Pursuant to Local Rule 7-19.1, please let me know as soon as possible whether you will oppose the application.

PLEASE TAKE FURTHER NOTICE of the following:

1. Pursuant to Paragraph 9 of Magistrate Audero's Standing Order, "The Court considers ex parte applications on the papers and usually does not set these matters for hearing."
2. Pursuant to Paragraph 9 of Magistrate Audero's Standing Order, "The Court generally will not rule on an ex parte application for at least two (2) court days after the party subject to the requested order has been served..."
3. Pursuant to Paragraph 9 of Magistrate Audero's Standing Order, if you are opposing the ex parte application, "opposing papers are to be filed no later than two court days following service" of the ex parte application.
4. Pursuant to Paragraph 9 of Magistrate Audero's Standing Order, "Opposing counsel should advise the [Courtroom Deputy] as soon as possible whether their client intends to oppose the ex parte application."

Kind regards,

Andy Nelson
Of Counsel

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4340 Von Karman Avenue, Suite 380
Newport Beach, CA 92660
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c: 949.874.7456

e: anelson@ForwardCounsel.com

www.ForwardCounsel.com

From: Andrew Nelson <anelson@forwardcounsel.com>

Sent: Tuesday, November 5, 2024 3:08 PM

To: Kevin Keener <kevin.keener@keenerlegal.com>

Cc: Pamela Ravalli <pravalli@forwardcounsel.com>

Subject: RE: BCW Diversified, Inc. v. Ultra Pro International, LLC

Hi Kevin,

Just left you a voicemail. I have not been able to reach you on this and it's critical that I do. Would you please call me? Mobile number is below.

Thanks, Andy

Andy Nelson

Of Counsel

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From: Andrew Nelson <anelson@forwardcounsel.com>

Sent: Monday, November 4, 2024 3:29 PM

To: Kevin Keener <kevin.keener@keenerlegal.com>

Cc: Pamela Ravalli <pravalli@forwardcounsel.com>

Subject: RE: BCW Diversified, Inc. v. Ultra Pro International, LLC

Hi Kevin,

Sorry to bug, but we have to confer on this issue per local rules.

I think this should only take us a minute, and I'm hopeful that the suggestion I proposed provides the solution anyhow and we can agree on that. Would you be able to speak with me on this today?

Many thanks and kind regards,

Andy Nelson

Of Counsel

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From: Andrew Nelson
Sent: Friday, November 1, 2024 4:47 PM
To: Kevin Keener <kevin.keener@keenerlegal.com>
Cc: Pamela Ravalli <pravalli@forwardcounsel.com>
Subject: RE: BCW Diversified, Inc. v. Ultra Pro International, LLC

Hi Kevin,

I apologize that it's after hours, but since we're hitting the weekend, I really need to know what we can do on this issue. I think I have a pretty good solution. Can we do that?

Thanks,

Andy

Andy Nelson
Of Counsel

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c: 949.874.7456
e: anelson@ForwardCounsel.com
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From: Andrew Nelson
Sent: Thursday, October 31, 2024 2:23 PM
To: Kevin Keener <kevin.keener@keenerlegal.com>
Cc: Pamela Ravalli <pravalli@forwardcounsel.com>
Subject: RE: BCW Diversified, Inc. v. Ultra Pro International, LLC

Hi Kevin,

I hope all went well. Wanted to circle back on this.

Many thanks,

Andy Nelson
Of Counsel

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From: Andrew Nelson
Sent: Tuesday, October 29, 2024 1:19 PM
To: Kevin Keener <kevin.keener@keenerlegal.com>
Cc: Pamela Ravalli <pravalli@forwardcounsel.com>
Subject: RE: BCW Diversified, Inc. v. Ultra Pro International, LLC

Kevin,

For Thursday, 8 to 9, 12 to 1, and 2 to 5 Pacific work.

Good luck.

Thanks, Andy

Andy Nelson
Of Counsel

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e: anelson@ForwardCounsel.com
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From: Kevin Keener <kevin.keener@keenerlegal.com>
Sent: Tuesday, October 29, 2024 12:47 PM
To: Andrew Nelson <anelson@forwardcounsel.com>
Cc: Pamela Ravalli <pravalli@forwardcounsel.com>
Subject: Re: BCW Diversified, Inc. v. Ultra Pro International, LLC

Hi Andy,

Sorry. I haven't had a chance to review this. I'm going to be in court most of the day tomorrow. Let's touch base on Thursday. Let me know some times that work for you.

Kevin

On Tue, Oct 29, 2024 at 3:33 PM Andrew Nelson <anelson@forwardcounsel.com> wrote:

Hi Kevin,

I do not believe I've received a call or otherwise seen a response to this. Have you sent one, as I want to make sure I haven't missed anything.

Thanks, Andy

Andy Nelson

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From: Andrew Nelson <anelson@forwardcounsel.com>

Sent: Friday, October 25, 2024 1:16 PM

To: Kevin.keener@keenerlegal.com

Cc: Pamela Ravalli <pravalli@forwardcounsel.com>

Subject: BCW Diversified, Inc. v. Ultra Pro International, LLC

Hi Kevin,

I hope you're well. This follows the voicemail I left for you on Wednesday.

Under L.R. 7-3, I need to discuss is a potential motion for stay to keep the case on hold for the moment while we get this motion to transfer resolved. Of course we just filed our stipulation to extend the responsive deadlines to mid-November, the hearing date on our motion is November 20, just a few days later. My suggestion is that we file a second stipulation extending the responsive deadline just another 10 days or so. By then the motion would be resolved. If denied, we file responsive pleadings here. And if granted, then we settle the pleadings elsewhere. With that there would be no need to try and obtain a stay and the parties can still pursue other activity in the meantime to advance the matter. That would

just time shift everything a short spell and avoid the need for the parties to crash around with motion practice that isn't needed.

Let me know your thoughts on that. And please call me if you have another idea or something I write isn't clear. Either way, per rule we need to talk on the phone, so please do call me when you can. Much appreciated.

Kind regards,

Andy

Andy Nelson

Of Counsel

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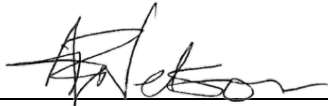
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CERTIFICATE OF SERVICE

I hereby certify that on November 12, 2024, I electronically filed the foregoing document with the Clerk of the Court using the Court's CM/ECF system, which will send a notice of electronic filing to all CM/ECF participants.

By: 
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